

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE COMMISSIONER OF COMMERCE

In the Matter of the Barberton Rescue  
Mission, Inc., Christian Brotherhood  
Newsletter, aka CBN and Christian  
Brotherhood Newsletter, Inc., aka CBN,  
Inc.

**ORDER**

By a written motion filed on November 13, 2002, the Respondents in the above matter seek an Order of Dismissal for Respondent Barberton Rescue Mission, Inc. The Department of Commerce filed a Memorandum in opposition to the Motion on November 20, 2002.

The Respondents are represented by Barry S. Brown, Esq., Suite 203, 1050 North Point Road, Baltimore, MD 21224; Jeffrey J. McNaught, Esq., Lindquist & Vennum, P.L.L.P., 4200 IDS Center, 80 South Eighth Street, Minneapolis, MN 55402; and Thomas F. Pursell, Esq., Lindquist & Vennum, P.L.L.P., 444 Cedar Street, Suite 1700, St Paul, MN 55101. The Department is represented by Jennifer S. Kenney, Assistant Attorney General, and Karen Kampa Jaszewski, Assistant Attorney General, 445 Minnesota Street, Suite 1200, St. Paul, MN 55101-2130.

Based upon the submissions by the parties, and for the reasons set out in the attached Memorandum,

IT IS HEREBY ORDERED:

1. The Motion to Dismiss the Barberton Rescue Mission, Inc. as a party to this proceeding is DENIED.
2. Respondents must produce designee deponents as noticed by the Department.

Dated: November 25, 2002

S/George A. Beck  
GEORGE A. BECK  
Administrative Law Judge

## MEMORANDUM

The Respondents seek an Order Dismissing the Barberton Rescue Mission, Inc. (BRM) from this contested case proceeding on the basis that the Department's claim against BRM is now moot. The Department issued a Cease and Desist Order against CBN on June 20, 2001. CBN requested a hearing and on October 18, 2001, the Department issued its Notice of and Order for Hearing, naming as parties BRM, CBN and CBN, Inc. The Department alleges that these entities sold insurance in Minnesota without being properly licensed to do so.

In April of 2001, an Ohio court appointed a receiver for Barberton Rescue Mission, Inc. d/b/a Christian Brotherhood Newsletter. At that time BRM operated the Newsletter. In early June of 2001, the receiver agreed to a settlement with the Internal Revenue Service that required the separation of BRM from the Newsletter. At the end of June, the receiver advised the Ohio court that the operations of BRM and CBN were substantially separated.

On July 13, 2001, the receiver incorporated a new corporation known as the Christian Brotherhood Newsletter, Inc. and at that time the Newsletter became completely separate from BRM. At present, BRM operates a rehabilitation facility and no longer has any control or responsibility regarding the Newsletter. BRM argues that since any operation of the Newsletter would be a breach of its agreement with the IRS, it is appropriate to dismiss it from this proceeding.

Minnesota case law provides that courts will hear only live controversies and will not pass on the merits of a question merely for the purpose of setting precedent.<sup>[1]</sup> The case law also provides that a matter may not be moot if a case is "capable of repetition, yet evading review." BRM argues that it is now offering only rescue mission services and that it is prohibited by its agreement with the IRS from operation of a Newsletter. It suggests that there is no longer any live controversy as to BRM in this proceeding.

The Department points out that BRM was responsible for the operations of the Newsletter at the time that the Commissioner issued his Cease and Desist Order on June 20, 2001. A permanent Cease and Desist Order in this matter would prohibit BRM from engaging in the unlicensed business of insurance in the future. The Department asserts that a justiciable controversy exists, namely, whether BRM engaged in the unlicensed business of insurance. It argues that voluntary cessation of allegedly illegal conduct does not deprive a tribunal of power to hear and determine a case and does not make a case moot.<sup>[2]</sup> It asserts that a case is not moot if a controversy remains to be determined, such as the legality of challenged practices. The Department notes that the purpose of an injunction is to prevent future violations and that the discontinuance of a practice that constitutes a violation does not render the controversy moot.<sup>[3]</sup>

Although it may be unlikely that BRM will conduct a similar newsletter operation in the future, if its past operation constituted engaging in the selling of insurance, the

Commissioner may be entitled to a Cease and Desist Order that prohibits BRM from engaging in that activity again.<sup>[4]</sup> There is a live controversy as to whether or not BRM violated the statute when it operated the Newsletter. Cessation of conduct contrary to the statute does not affect the Commissioner's authority to proceed against BRM. Nor does its agreement with the IRS render the matter moot, since BRM could act contrary to that agreement, without any consequences in Minnesota, should its past activities be contrary to Minnesota law but the Cease and Desist Order is not made permanent against it.

The Department states that the Respondents have resisted discovery as to BRM pending the resolution of this motion. The operations of the Newsletter prior to July of 2001 are clearly relevant to this proceeding. BRM properly remains a party to this proceeding and subject to discovery, including Rule 30.02(f) depositions.

The Respondents requested oral argument on this Motion and the Department made no request in that regard. Having reviewed the submissions by the parties, it appears that the issues have been fully briefed and that oral argument is not necessary to the development of a full and complete record on which a proper decision can be made, within the meaning of Minn. Rule Part 1400.6600. Therefore, no oral argument was scheduled.

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<sup>[1]</sup> *In re: Inspection of Minnesota Auto Specialities, Inc.*, 346 N.W. 2d 657, 658 (Minn. 1984); *Schiff v. Griffin*, 639 N.W. 2d 56, 63 (Minn. App. 2001)

<sup>[2]</sup> *U.S. v. WT Grant Co.*, 345 U.S. 629, 632 (1953)

<sup>[3]</sup> *FTC v. Goodyear Tire and Rubber Co.*, 304 U.S. 257, 260 (1938)

<sup>[4]</sup> Minn. Stat. § 45.027, Subd. 5a.